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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/547,336	09/01/2005	Kalman Bolla	9007-1014	3109
466 7590 02/19/2009 YOUNG & THOMPSON 209 Madison Street Suite 500 ALEXANDRIA, VA 22314			EXAMINER JACKSON, BRANDON LEE	
			ART UNIT 3772	PAPER NUMBER
			MAIL DATE 02/19/2009	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/547,336

Applicant(s)

BOLLA, KALMAN

Examiner

BRANDON JACKSON

Art Unit

3772

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 October 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 15-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 15-23, 28-30 and 32-40 is/are rejected.
- 7) ☒ Claim(s) 24-27 and 31 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

This Office Action is in response to amendments/arguments filed 10/9/2008.
Currently, claims 15-40 are pending in the instant application.

Response to Arguments

Applicant's arguments with respect to claims 15-23 and 28-30, and 32-40 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 16 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant claims the splint element is fitted to the outside contour of the thorax without any additional aid or tool, however, Applicant's device is fitted to the user via adhesive, which could be considered an additional aid.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 15, 17-19, 21-22, 28, and 32-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Groiso (US Patent Re. 34,753). Groiso discloses an immobilization device (1) comprising a flat single-piece splint element (2) arranged to cover a fractured portion of a rib, as well as, surrounding non-fractured ribs (fig. 4). The device (1) is made of a plastically deformable plastic (col. 3, lines 18-21). Groiso fails to disclose the device comprises a layer of adhesive and comprises aluminum; however, Groiso does disclose it is known in the art to use adhesive to hold the splint in place while it cools and returns to its rigid state (col. 1, lines 41-43). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the Groiso device to have a layer of adhesive, as taught by the prior art, in order to assist in securing the plate in position and remaining in position. The device (1) further comprises a covering (2B), which is a pad that is analogous to tissue. The splint element (2) may be provided with holes (2A).

With respect to claims 18-19, it would have been obvious to one having ordinary skill in the art to use either material because it has been held to be within the general

skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Therefore, it would have been an obvious matter of design choice to use plastic or metal, including aluminum, in the device of Groiso for making the most comfortable splint device. Moreover, it is well known in the art for splints to be made of metals, like aluminum.

Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Groiso (US Patent Re. 34,753) in view of Tornai (US Patent 7,393,334). Groiso substantially discloses the claimed intention; see rejections to claims 15 and 32 above. Groiso fails to disclose the splint element is fitted to the thorax without and additional aid or tool. However, Tornai teaches a splint (1) applied to a portion of the body without and additional aid or tool. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the Groiso device to be applied without any additional aids or tools, as taught by Tornai, in order to minimize the amount of material that must be applied to the user for more comfort.

Claims 20, 23, 29-30, 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Groiso in view of Bolla et al. (US Patent 6,039,706). Groiso substantially discloses the invention as claimed; see rejection to claims 15, 18, and 19 above; but does not expressly state that the plastically deformable metal plate is corrugated. Bolla et al. teaches the use of sheet metal (2) being corrugated (42) in a splint device. Bolla et al. further discloses that the sheet metal is easily shaped yet permits immobilization (col. 1, lines 20-25). Therefore, it would have been obvious to

one having ordinary skill in the art at the time of the invention to use the plastically deformable metal with corrugations as taught by Bolla et al. in the device of Groiso for the purpose allowing the splint to adapt to local irregularities in the extremities or body parts (col. 2, lines 5-13).

The above combination teaches the use of a foil (aluminum/metal sheet) in the splint device. The limitations that it is used for protecting covering of the upper side of the splint element is an intended use limitation.

Groiso substantially disclose the invention as claimed, but does not expressly state that the plastically deformable metal plate is corrugated. Bolla et al. teaches the use of sheet metal (2) being corrugated (42) in a splint device. Bolla et al. further discloses that the sheet metal is easily shaped yet permits immobilization (col. 1, lines 20-25). Therefore it would have been obvious to one having ordinary skill in the art at the time of the invention to use the plastically deformable metal with corrugations as taught by Bolla et al. in the device of Groiso for the purpose allowing the splint to adapt to local irregularities in the extremities or body parts (col. 2, lines 5-13).

Groiso substantially discloses the invention as claimed, but does not expressly state that the adhesive layer is provided with the analgesic agent but it would have been obvious to one having ordinary skill in the art at the time of the invention to have the agent be on the adhesive layer so that it can contact the patient and increase pain relief (col. 5, lines 21-25). Groiso does not expressly state the use of a protective foil. Bolla et al. teaches the use of a foil (aluminum/metal sheet) in the splint device and further disclose that the sheet metal is easily shaped yet permits immobilization (col. 1, lines

20-25). Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to use the plastically deformable metal with corrugations as taught by Bolla et al. in the device of Groiso for the purpose allowing the splint to adapt to local irregularities in the extremities or body parts (col. 2, lines 5-13).

Claims 37-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Groiso as applied to claim 32 above, and further in view of Nagai et al. (US Patent 4,390,520). Groiso substantially discloses the claimed invention; see rejection to claim 32 above. Groiso fails to disclose the adhesive layer of device contains an analgesic agent. However, Nagai teaches an adhesive containing an analgesic agent (abstract). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the adhesive layer of Groiso, as taught by Nagai, in order to assist in the healing of the injured portion of the body.

Allowable Subject Matter

Claim 24-27 and 31 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BRANDON JACKSON whose telephone number is (571)272-3414. The examiner can normally be reached on Monday - Friday 8-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on (571)272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Brandon Jackson/
Examiner, Art Unit 3772

BLJ

/Michael Brown/
Primary Examiner, Art Unit 3772